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ABSTRACT

Presented is a curriculum guide for teaching gifted junior high students social studies. The main purpose of the curriculum is to heighten student awareness of justice and due process of law by means of preparing for and conducting a mock trial of an historical figure. Thirteen cognitive behavioral objectives and five affective objectives are listed. Five to seven class periods are recommended for phase one of the curriculum which consists of motivation and background, introduction to themes and a study of the life and times of the defendent. Sample lesson plans are given for study topics such as the rights of the accused, the Bill of Rights, unreasonable search and seizure, the right to remain silent, and an introduction to due process. Phase two of the curriculum consists of preparation of roles for the trial in small groups and involves research skills and teacher-group interaction for five to eight class periods. Sample lesson plans consider initiation of phase two, organizing the groups, small group work, the culminating activity program, and suggested follow up activities. A final chapter gives sample test items. An annotated bibliography of approximately 30 books or articles, six motion pictures and one filmstrip are also included. (DB)

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social sciences

CURRICULUM GUIDE FOR TEACHING GIFTED STUDENTS SOCIAL SCIENCES IN GRADES SEVEN THROUGH NINE

CALIFORNIA STATE DEPARTMENT OF EDUCATION

social sciences

CURRICULUM GUIDE FOR TEACHING GIFTED STUDENTS SOCIAL SCIENCES IN GRADES SEVEN THROUGH NINE

Prepared for the

DIVISION OF SPECIAL EDUCATION
California State Department of Education

By

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U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
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Foreword

Although mentally gifted students comprise only a small part of the student population, they are an extremely important part in terms of their great potential. Every student – gifted or otherwise – should have the opportunity to learn and develop to the extent of his capability.

To make such an opportunity a reality, teachers of the gifted must give generously of their time and talent, and they must utilize all available resources in their attempt to challenge the gifted.

If the special educational needs of the gifted students are not met, these students will likely become frustrated and thus prevented from reaching their educational goals. If this happens, the students, the state, and the nation all will suffer a great loss.

The State Department of Education has conducted a project to develop adequate curriculum guides and materials for teaching the mentally gifted. This guide is one of a series of publications from that project.

It is my hope and belief that this guide, designed especially for teachers of the mentally gifted, will be most useful in their efforts to challenge mentally gifted students.

Wilson Riles

Superintendent of Public Instruction

Preface

This curriculum guide is one of the products of an education project authorized and funded under provisions of the Elementary and Secondary Education Act, Title V. The guide is intended for use by teachers of students whose mental ability is such that they are classified as mentally gifted.

Curriculum Guide for Teaching Gifted Students Social Sciences in Grades Seven Through Nine is one of a series of curriculum guides for use by teachers of the mentally gifted in grades one through three, four through six, seven through nine, and ten through twelve. The guides, which contain practical suggestions that teachers can use to advantage in particular subject areas, were prepared under the direction of John C. Gowan, Professor of Education, and Joyce Sonntag, Assistant Professor of Education, both of California State University at Northridge.

Also developed as part of the education project is a series of curriculum materials intended primarily for use by administrators, consultants, and other professional personnel involved in helping gifted children. These materials were prepared under the direction of Mary N. Meeker, Associate Professor of Education, and James Magary, Associate Professor of Educational Psychology, both of the University of Southern California.

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CHAPTER 1

Introduction

The purpose of this publication is not to present a brief course in the law. Its purpose is rather to heighten student awareness of justice and due process of law through a meaningful involvement with the Bill of Rights, which is a defendant's guarantee of a fair trial. The concepts of justice and due process of law are unit themes on which all class activities are centered. Students are encouraged to seek out the meaning of these concepts through selected readings and library research in preparation for a mock trial. At the trial, students charge an historical character with a crime and send him before the bar of justice. Students who do not feel capable of presenting their ideas orally have an opportunity to edit a class newspaper or to construct a mural dealing with the trial.

The curriculum, which has been tried successfully with gifted students in grades seven through nine, offers the students a more exciting experience than the regular course of study. It capitalizes on the gifted child's greater curiosity, energy, and versatility. The curriculum provides for his need for independence and discovery. Less teacher control and drill occur in basic work, and more time is provided for individual study and self-direction. The student participates actively. Trial preparation and culminating activity foster divergent thinking and creativity among the participants.

Overview of the Publication

Phase One of this publication deals with the principles involved in a fair trial. The students or the teacher, or both, choose the defendant and charge him with a crime. Students volunteer for their roles. Procedure and assignment booklets available for the entire class serve as guides in the trial preparation and presentation.

In Phase Two the class is given a chance to meet in small groups to prepare for their roles, each member of the class having at least one role to prepare for. Students capable of making good oral presentations may elect to serve as judges, grand jury foremen, district attorneys, defense counsel, and witnesses. Others may write for the class newspaper or construct murals.

As a culminating activity, the students test their own understanding of due process of law and justice in mock trials. These

presentations may take place before an audience of other classes, parents, and friends, and may run for several class periods.

In giving an historical figure a preliminary and grand jury hearing, a trial, and an appeal, the class experiences the concept of due process. History becomes more meaningful to the young learner because it is related to the present in a manner that draws on his enthusiasm for the dramatic. Since each student is involved in some phase of the total process, he feels a part of it and comes to see that due process and justice are intended for everyone.

Included in this curriculum guide are case studies and readings dealing with courts and the law. These sources provide the background students need to prepare for trial. Detailed plans for several class lessons are provided as a guide to be adapted to the school situation. As the unit progresses, the suggested lessons become less specific. Lists of recommended books and audiovisual materials, quizzes, and a sample evaluation are also included.

General Lesson Plans

Phase One: Motivation and background; introduction to themes; class reading, writing, discussions, and quizzes; and study of life and times of defendant. Number of class periods – five to seven.

Phase Two: Preparation of roles in small groups; research skills; teacher-group interaction. Number of class periods – five to eight.

Culminating activity: Presentations of the activities involved in observing due process in the trial of the defendant; evaluation. Number of class periods – two to five.

Note: Time limits are offered only as general guidelines; they should be adjusted to meet individual needs. Teachers who feel that their classes need more historical background will, of course, want to devote several additional lessons in Phase One to providing the needed information.

Behavioral Objectives

Behavioral objectives to be attained in both phases include both cognitive and affective items.

Cognitive: Phase One

1. *Knowledge.* When shown a list of key terms relating to due process and the defendant, the students will be able to match correctly the terms and their definitions.
2. *Comprehension.*
   a. Given a list of constitutional guarantees, the student will be able to identify those essential to due process of the law.

b. Criterion item. In the following list of constitutional guarantees, mark an *X* next to the ones essential to the due process of law.
   (1) Freedom of religion
   (2) Freedom from cruel and unusual punishment
   (3) Freedom from excessive bail
   (4) Freedom of the press
   (5) Freedom of speech
   (6) Freedom from unreasonable searches and seizures
   (7) Freedom to remain silent
   (8) Freedom to consult an attorney
   (9) Freedom of assembly

3. *Comprehension.*
   a. Shown examples of due process guarantees, the student will name the guarantee shown.
   b. Criterion item. What do we call a criminal defendant's right to pledge, or get other persons to pledge, a certain amount of money to guarantee that he will be on hand when the time for his trial arrives?

4. *Comprehension.*
   a. The student will describe in his own words the meanings of the constitutional guarantees of due process of law.
   b. Criterion item. Tell how *bail* helps a criminal defendant receive a fair hearing.

5. *Synthesis.*
   a. The student will construct hypothetical situations involving the violation of the constitutional guarantees of due process.
   b. Criterion item. Write a story about a criminal defendant who was arrested in a way that violates due process of law.

6. *Application and analysis.*
   a. When presented with a series of hypothetical situations dealing with due process of law, students will apply criteria developed in class consistent with judicial precedent and will recognize whether:
      (1) A search and seizure for evidence is "unreasonable"
      (2) A witness and/or criminal suspect or defendant may invoke the Fifth Amendment's right to silence or the Sixth Amendment's right to counsel
      (3) Bail is "excessive"
      (4) Punishments are "cruel and unusual"
   b. Criterion item. We are dealing here with reports about searches and seizures. In none of these incidents does the

police officer involved possess a search warrant. In the blank space before each item, the student is to write the following:

A if the search is reasonable
B if search is unreasonable
C if more information is needed before a decision can be made

Note: Each of the letters may be used *more than once.*

__(1) The police officer sees the suspect steal some money and drive off in a car. The officer stops the suspect's car, arrests the suspect, and then seizes the money.

__(2) The police officer arrests a suspect whom he sees robbing a store. He then searches the suspect for a concealed weapon.

__(3) The police officer knocks on the door of a private home, identifies himself, and asks for permission to search the home for stolen goods. The owner grants permission.

7. *Application, analysis, evaluation.*
   a. When presented with hypothetical situations dealing with the due process of law and when asked to indicate approval or disapproval of the outcome, students will normally respond in a manner consistent with the criteria developed in class.
   b. Criterion item. We are dealing here with a situation that the student must examine and then decide whether he approves or disapproves of the final action. If he approves, the student is to mark *A* next to the situation; if he disapproves, he is to mark *D*.

      Five witnesses told a police officer that Tom Smith killed a man. Smith was arrested and confessed his guilt to the police. It was therefore decided not to conduct a jury trial for Smith because it would be a waste of the taxpayer's money.

8. *Application, analysis, evaluation.*
   a. When presented with hypothetical situations dealing with the due process of law and when asked to express agreement or disagreement with selected criticisms, students will normally respond in a manner consistent with the criteria developed in class.
   b. Criterion item. A man with a criminal record is accused of shooting three people in the back and killing them. He claims he is innocent although witnesses are prepared to testify against him. Just before the trial a newspaper runs a front-page story on the crime under the headline "Mad-Dog

Killer Jones Deserves Death." With which one of the following criticisms do you most agree?

__(1) That kind of headline interferes with a man's chances for a fair trial.

__(2) Nothing is wrong with the way the headline is written, but the story should have been taken off the front page, which too often emphasizes crime and violence.

__(3) Freedom of the press allows the newspaper to take a stand.

__(4) It is all right for the newspaper to urge conviction of the man, but it is not right for the newspaper to say exactly what the sentence of the court should be.[1]

9. *Analysis.* Students will analyze precedents of issues that can be used to serve as a basis for appeal. The students will prepare a written brief, including appropriate information from precedents dealing with the issues being considered.
10. *Evaluation.* Students will, through group discussion, consider justice as conceived in the Middle Ages in contrast with their own concept of justice.
11. *Evaluation.* After becoming aware of laws pertaining to the gathering of evidence, students will discuss whether we are making it too easy for guilty men to go free to commit more crimes.

Cognitive: Phase Two

1. *Comprehension.* When presented with a hypothetical situation involving a denial of justice and due process and when asked to write a paragraph explaining how he would rectify the situation, the student will normally indicate an "understanding" of the themes being developed by including at least four of the following items in his paragraph:
   a. Fair hearing or trial
   b. Counsel provided for the accused
   c. Impartial judge and jury
   d. Right of the accused to cross-examine accusers
   e. Right of the accused to be informed of the charges against him
   f. Right of the accused not to be subjected to cruel and unusual treatment
2. *Synthesis.* When presented with the hypothesis that Hitler is innocent and when given appropriate criteria developed in class,

[1] Ira J. Winn, "Education and Consensus," *Social Education*, XXXII (January, 1968), 20-21.

students will normally test the validity of the hypothesis by developing a mock trial, using as "evidence" primary and secondary sources.

Affective: Phase One

1. After being exposed to selected motivational experiences, students will normally demonstrate a trait of good citizenship by volunteering to participate in some phase of due process.
2. When presented with selected case studies and asked to state a position and defend it, students will normally demonstrate an appreciation for views other than their own by listening to the contributions of their peers.

Affective: Phase Two

1. When assigned to one of the activities dealing with due process, students will normally demonstrate another trait of good citizenship by participating willingly as members of small groups.
2. During the analysis occurring after the trial, students will normally indicate a commitment to due process as a way of achieving justice by such responses as the following:

   I hate Hitler, but that defense lawyer didn't prepare his case very well.

   I hope the court of appeals will order a new trial.

   I voted not guilty because in this court of ours the district attorney didn't prove Hitler was guilty.
3. When presented with a questionnaire that they are asked to submit unsigned, at least three-quarters of the class will normally respond affirmatively to the statement *I enjoyed studying about World War II through the use of a mock trial.*

Generalizations and Concepts

The terms *justice* and *due process* are extremely nebulous concepts even for gifted youngsters. In giving to an historical figure a preliminary hearing, a trial, and an appeal, especially to a figure who has emotional impact for young people, the student is engaging in a form of "knowing by doing." Jerome Bruner calls this "the enactive representation of knowledge." Early in the mastery of a subject, according to Bruner, we may have to represent things in terms of what we do with them. It is only later that language and symbol systems can be applied with some degree of likelihood that their reference will be understood. "The way you get ahead with learning is to translate an idea into those non-rigorous forms that can be

understood."[2] Thus, justice and due process become more meaningful to the learners because they are presented in a manner that draws upon their enthusiasm for the dramatic.

By means of a mock trial, students are enabled to grasp abstractions through direct experience and to engage in a way of thinking that can aid them to become independent learners. Throughout the introductory and preparatory phases of this guide, students are given concrete data in the form of hypothetical and real case studies, articles taken from periodicals, dramatic fiction, and visual media as background material for trial preparation. Students are then called on to make intuitive leaps and educated guesses as they form hypotheses, test them, and draw conclusions. Youngsters are thus practicing a mode of inquiry that may have transfer value to situations in later life that call for problem solving.

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[2]Jerome S. Bruner, "Needed: A Theory of Instruction," in *Social Studies: Structure, Models, and Strategies.* Edited by Martin Feldman and Eli Seifman. Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1969, p. 261.

CHAPTER 2

Sample Lesson Plans: Phase One, Part 1

Learning activities are presented in this publication solely as a guide for those teachers who may wish specific examples. Teachers are expected to vary these activities in terms of their own interests and the interests and enthusiasm of their students.

Development of Motivation

The first thing for the teacher to do is to stir the enthusiasm of the students.

Presentation Number 1 [1]

How many of you have seen television programs or movies dealing with court trials? Has anyone attended a trial as a spectator? Would someone like to tell the class about the persons involved in a trial? For instance, who usually decides the case? What does the district attorney do? The defense attorney?

Procedure Number 1

1. Have students name current TV shows, movies, or books that deal with trials and the courts.
2. Ask members of the class to tell about trials they might have read about in the newspapers.
3. Use a current TV drama and ask such questions as *Is the trial true to life? Does the hero attorney always win his case? Do the innocent always go free and the guilty always go to jail?*

Presentation Number 2

For the next several lessons we will be learning something about trials. To make our study more meaningful, let's choose an historical character, charge him with a crime, and send him before the bar of justice as if he were alive. Maybe we can even invite another class and

[1] The matter contained in this publication in sections entitled "Presentation" is written as a teacher might present it to his class. The teacher may, of course, modify the material to fit specific classroom situations.

choose some of them to act as jurors. Volunteers will be needed to assist the district attorney in prosecuting the defendant. Will anyone consider being the defense attorney? How about witnesses? We will need some good ones. And of course we will need a fair judge and someone to play the defendant.

Some of you may not want speaking roles. You can volunteer to be editors of a class newspaper dealing with the trial. Others may wish to work on a mural to serve as a backdrop for our courtroom. Let's see your hands if you'd like to be involved in this. Later, we'll decide who does what. Let's think of some famous people in history we could put on trial. Let's choose someone from the period we are now studying and someone well enough known so that information will be available. Can anyone name a few possibilities?

Procedure Number 2

1. Be ready to suggest names from the current course of study. Try to draw out personalities who are controversial. Some of the possibilities are the following:

Alexander the Great	Benito Mussolini
Julius Caesar	Jefferson Davis
Caesar Augustus	Benedict Arnold
Elizabeth I	John Brown
Andrew Johnson	Czar Nicholas II
Kaiser Wilhelm	Joseph Stalin
Louis XIV	George III
Peter the Great	Napoleon Bonaparte
Frederick the Great	Aaron Burr
Louis XVI	Adolf Hitler
Marie Antoinette	

2. Suggest that the class members think about their choice until the next lesson before deciding on whom to try and on what charge. In certain situations the teacher may wish to make the choice of the historical defendant and the charge.

Presentation Number 3

Class, I'm going to read a very brief story of some strange ways of deciding a person's innocence or guilt. This way of doing things took place in Europe many hundreds of years ago. As I read, try to notice how these legal procedures differ from those we use today.

When Knights Were Bold

In charges of serious crime, the people of the Middle Ages often used methods that might well appall the most innocent. One was to bind the accused, hand and feet, and let him down by a rope into the water. It was

believed that if he were guilty, the water would refuse to receive him and he would float; but that if he were innocent, he would sink. It is to be hoped that the officers never forgot to rescue the man who sank. Far worse than this was the ordeal by boiling water. This was a matter of much ceremony. It took place in the church. First a cross, a censer, and relics of the saints were borne into the building. The priest followed, carrying a copy of the Gospels. He chanted a litany and the seven penitential psalms. He prayed that the truth might be revealed and that if the accused had had recourse to herbs or magic, it might not save him. Holy water was sprinkled about, particularly upon the kettle, in order that any illusions of the devil might be driven away. Then with many prayers the hand of the accused was thoroughly washed. He drank a cup of holy water and plunged his hand into the boiling kettle. The hand was sealed up, and at the end of the three days it was examined formally. If it showed no sign of a burn, the man was declared innocent; but if there was a blister " half as large as a walnut," this was regarded as proof of his guilt.

Another ordeal was that of the hot iron. This sometimes consisted of carrying a red hot iron seven or nine paces; sometimes, of walking upon burning plough shares. In the eleventh century, Queen Emma of England was accused of crime and was brought into the church for the test. The pavement was carefully swept, and nine red hot plough shares were laid upon it. The queen's shoes and stockings were taken off and her cloak thrown aside. Two bishops, one on either hand, led her toward the iron. Throughout the church there was sobbing and weeping. "Help her, help her! Saint Swithin, help her!" the people cried. The bishops, too, were in tears; but they bade her not to fear, for God would not suffer the innocent to come to harm. Then she stepped upon the plough shares, one after another. The old account says that she felt no pain and that her feet showed no injury.

The theory of these trials was that God would always save the guiltless; but many explanations have been attempted of the reason why the hot water and hot iron did not burn. If the water or the melted lead, which was sometimes used, was hot enough, feats similar to these have been performed. In regard to the test of the red hot iron, it has been suggested that during the many prayers that seem to have been said after the irons were laid in place, plough shares on a stone floor would cool very rapidly. Again, we are reminded that all these trials were in the hands of the priests, that the people were expecting miracles, and that if the priests wished to save a man, they could easily arrange some deception or could harden his skin by some ointment. . . .[2]

Procedure Number 3

1. Draw out a concept of justice: Justice is something like the idea of right and wrong. Ask the students *Was justice done during the Middle Ages?*

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[2]Eva M. Tappan, *When Knights Were Bold.* Boston: Houghton Mifflin Co., 1939, pp. 47-49. Reprinted by permission of the publisher.

2. Draw out the contrast between the concept of justice accepted in the Middle Ages and that accepted now. Trial by ordeal as practiced in the Middle Ages did not involve an attempt to do justice by rational means. People looked to God to work miracles in protecting the innocent and punishing the guilty. Today we look to a fair hearing to discover the truth. It is right, we feel, to give every person a decent chance to defend himself and to make sure that he is guilty before he is convicted.

Presentation Number 4

Fortunately for us, medieval methods are no longer in use. We believe in other procedures to make sure justice is done. Lawyers call these other procedures due process of law, which means a way of seeking justice through a fair trial. If you are suspected of a crime, a policeman may not lawfully keep you in jail or hold you for long without accusing you of something and bringing you to court.

Due process of law means that you have a chance to hear what you are accused of and that you have the right to get a lawyer to defend you. Witnessess cannot tell what they think about you, only what they saw. You must be proved guilty beyond a reasonable doubt before you are convicted. That is what due process of law is all about. It tries to make sure that an innocent person is not punished. We'll be doing some reading and talking about justice and due process of law. It is important that we know about these things if we are to be fair to our defendant.

Class, I'm going to issue each of you a story about a trial that took place in Georgia a few years ago. Follow along as I read it aloud. Ask yourself whether justice was done in this case.

Georgia

Inside the second-floor Madison County courtroom in Danielsville, Ga. (pop. 362), the air was hot and humid. On the narrow balcony overlooking the courtroom, a dozen Negroes silently watched the proceedings. Below, the seats in the whites-only section were jammed. All had come last week to see the murder trial of *State of Georgia v. Joseph Howard Sims and Cecil William Myers.*

Sims, 41, an Athens, Georgia, machinist, and Myers, 25, a yarn plucker at an Athens textile mill, were charged with the senseless shotgun slaying last July 11 of District of Columbia educator Lemuel A. Penn, 49, who was driving home after a training stint as an Army Reserve lieutenant colonel at Fort Benning, Ga. A third defendant, gas station attendant James S. Lackey, 28, had been granted a separate trial. All three are Ku Klux Klansmen.

A chilling story. For the better part of two days, Special State Prosecutor Jeff Wayne and D. A. Jim Hudson argued about the admissibility of an eight-page, handwritten confession given to the FBI, and later repudiated, by

Lackey. Finally, whitehaired Judge William Carey Skelton ruled: "I'll admit it." Wayne, a tall, rangy Gainesville lawyer, cleared his throat and began to read Lackey's chilling story. "At some time between 4 a.m. and 4:30 a.m., we spotted a 1959 Chevy occupied by several colored men. We trailed the car and noticed the Washington, D.C. plates. 'I believe' – Mr. Sims said, 'that must be some of President Johnson's boys.' I was driving, and I began following the car as directed by Myers, who was sitting alongside of me up front. Sims was sitting in the back. Sims told me to fall back and follow the Negroes, and I stayed back 100 to 200 yards. I asked the others what they were going to do, and Sims said, 'I'm going to kill me a nigger.' Both Sims and Myers told me to pass the car occupied by the Negroes from Washington. When I came alongside the Negroes' car, both Myers and Sims fired shotguns into the Negroes' car."

Lackey had told how the three white men returned to an Athens garage operated by Herbert Guest, 37. Guest had been arrested with the others, but a Madison County grand jury failed to return a murder indictment against him. Continued Lackey's confession: "The double-barreled shotgun used by Cecil Myers was the shotgun usually hanging on the wall of Guest's garage. The shotgun used by Sims is his own gun. As soon as we got back to Guest's garage, both Myers and Sims cleaned the shotguns in the garage. They wiped the guns off with a rag. Guest asked what had happened, and Sims said, 'We shot one, but don't know if we killed him or not.'

"The original reason for our following the colored men was because we heard that Martin Luther King might make Georgia a testing ground for the civil rights bill. We thought some out-of-town niggers might stir up some trouble in Athens. We had intended scaring off any out-of-town colored people before they could give us any trouble. When the car from Washington was spotted on July 11, we thought they might be out-of-towners who might cause trouble."

A short defense. Later, when called to the witness stand, garage owner Guest took the Fifth Amendment 16 times. But he had already made a statement to the FBI, and it too was admitted into evidence by Judge Skelton. In it Guest told of overhearing a conversation between Sims and Myers the day after Penn's killing: "I overheard one of them say that they thought the car they had shot had gone into the river," said Guest. Next night, he said, "They told me that they were the ones that shot at the car in which Penn was killed."

With that, the state rested. The defense took 1 hr. 40 min. to present its case, which consisted chiefly of unsworn testimony by both Sims and Myers that they were innocent. "I believe I was in Athens at the time," said Sims. Parroted Myers: " I do believe I was in Athens at this time." State Solicitor-General Clete Johnson demanded the death penalty. "It was cold-blooded assassination."

But Georgia juries are not in the habit of convicting white men for killing Negroes, and at week's end, after deliberating 3 hrs. 15 min., the all-white, all-male jury found Klansmen Sims and Myers not guilty.[3]

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[3]"Georgia," *Time* (September 11, 1964), 23-24. Reprinted by permission of the publisher.

Procedure Number 4

1. Distribute copies of "Georgia." Read the selection aloud.
2. Students will want to talk about this story. It can be a reference point for developing the concept of justice.
3. Because a jury trial is held, will justice be done? What does this story teach us about the jury system?
4. Some members of the class may suggest a change of venue to a northern state. Other students may want to know why the jury had no Negro representatives. The teacher can point out that a trial must take place in the state where the alleged crime was committed and that each state determines its own juror qualifications.
5. The teacher can tell the class that the two defendants were tried later on the lesser charge of "conspiring to violate the civil rights of Negroes." They were convicted and sentenced to ten years in prison. The new charge enabled the trial to be held in federal court. The defense attorney said that he would appeal the conviction.

The Rights of the Accused

The protection of the rights of a defendant in a criminal trial is one of the most important functions of the Bill of Rights.

Presentation Number 1

(Prepare a transparency of the statue of justice that rests on top of Old Bailey, the central criminal court in London. The transparency should be used with an overhead projector. Or ask an interested student to prepare a ditto master of the statue that can be duplicated for the entire class. Notice that the female figure representing justice carries a sword and some scales and that she is blindfolded. Can anyone tell why? Justice is blindfolded to symbolize her blindness to demands for special favors. She carries a pair of scales to symbolize the careful weighing of evidence to arrive at the truth. And she carries a sword aloft to indicate that the law is backed by force – the power to protect the innocent and punish the guilty.)

As you all know, the first ten amendments to our Constitution are called the Bill of Rights. This document tries to guarantee equal justice for all Americans. To make sure the trial is fair and justice is done, let's grant our historical defendant the privileges and protections guaranteed by the Bill of Rights. Nothing we do may violate its provisions. Can anyone tell us in his own words some of the things the Bill of Rights says about a suspect's rights?

Procedure Number 1

1. Issue copies of the Bill of Rights.
2. Refer students to amendments 4, 5, 6, and 8.
3. This introduction can be superficial because the first reading assignment (to be given later) should present the rights of the accused in depth. Be ready to help with such guarantees as (a) the right to know the charges; (b) the right to be defended by counsel; (c) the right to a speedy public trial before an impartial jury; (d) the right to call witnesses and to cross-examine accusers; (e) the right to remain silent; (f) the right to bail; (g) the right to be free from double jeopardy and cruel punishment; (h) the right, in certain cases, to be heard by a grand jury before being put on trial; and (i) the right to be free from unreasonable searches and seizures.
4. Now might be an appropriate time to use an audiovisual aid (see listing at the end of this publication). An excellent motion picture is *The Great Rights,* which through animation dramatizes what could happen if the Bill of Rights were taken away. A worthwhile filmstrip is *Our National Government – The Growth of the Constitution,* a series of cartoons depicting the major provisions of the Bill of Rights. The teacher should focus attention on those amendments that relate to the rights of the defendant; i.e., 4, 5, 6, and 8. Presenting such a filmstrip at this time will enable students to practice identifying and defining the rights of an accused person.

Presentation Number 2

Your first assignment is an important one if the defendant is to have a fair trial. First, read the brief selection I am going to hand out called "The Rights of the Accused."[4] (Teachers may wish to substitute more easily available materials for this and any future assignment.) In it you will find a discussion of some of the protections that the constitution guarantees to defendants accused of criminal offenses. The things we have just discussed will become clearer in your minds. As you read, write down a few details about each one of these items to help you remember. Read carefully because during the next lesson there will be a short quiz on how well you have understood. The items discussed are *habeas corpus, bail, grand jury indictment, counsel, the right to silence, appeal,* and *double jeopardy.*

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[4]"The Rights of the Accused," in *Our Wonderful World.* Chicago: Spencer Press, 1962, p. 295.

Presentation Number 3

Americans feel that it is a very serious matter to accuse a person of a crime. Many unthinking individuals jump to the conclusion that whoever is accused is guilty. *Where there's smoke there's fire,* they say. So it is important that early in the criminal process we give the accused a chance to defend himself. To help us give justice to the defendant, we have included in our constitution and Bill of Rights procedures that guarantee a criminal suspect a fair hearing – due process of law.

Procedure Number 3

Have a student list the rights on the chalkboard as members of the class volunteer them. Urge students to explain, in their own words, the rights mentioned in the reading selection: *habeas corpus, bail, grand jury indictment, counsel, jury trial, indictments, silence, appeal, double jeopardy, cruel and unusual punishment.* Then ask students to work on a crossword puzzle quiz dealing with the Bill of Rights:

Crossword Puzzle Quiz

Directions: The answers to this crossword puzzle appear after the 20 questions. Use only the answers from this list. Some of them may not be needed. None will be used more than once. All answers are meant to be written *across* the page. Let's do question number 1 together. "In our legal system, any person accused of an offense is guaranteed a _____." Two words are needed. Now count the spaces between the diagonal lines. Include the space with the number in it as a blank space. How many spaces are to be filled in? Look at the list of answers. Can anyone choose the correct one? Now everyone should write these correct words down on your own puzzle as the answer to number 1. Notice, too, that there is no space between the words in your puzzle. One final word. If you complete every one of the 20 questions across the page, a secret message will appear in one of the columns *down* the page. Write this message on the back of the puzzle. Papers will be collected when everyone has had a chance to finish. If you complete the work early, perhaps you will want to begin work on your own puzzle, basing it on what we have learned about the rights of the accused. The rest of the class may wish to try to solve your puzzle.

1. In our legal system any person accused of an offense is guaranteed a _____.
2. The number of the amendment guaranteeing that the accused may remain silent is _____.
3. If a convicted person feels that he did not receive a fair trial, he may _____ to a higher court.
4. An accused person has freedom from _____; that is, from twice being tried for the same offense.
5. The Bill of Rights forbids _____ fines.

6. In many instances an accused person may go free until his trial by posting a sum of money known as _____.
7. In our country a defendant is innocent until proved _____.
8. Punishments by _____ are not allowed no matter how horrible the crime committed.
9. An _____ crime is one where, if convicted, the person may be sent to jail or sentenced to hard labor for a long time.
10. The citizens who decide on the defendant's innocence or guilt serve on the _____.
11. The first ten Amendments to the _____ are known as the Bill of Rights.
12. A group of citizens who decide whether a person should be brought to trial is known as the _____.
13. Our Bill of Rights forbids cruel and unusual _____.
14. When the grand jury officially accuses a person of a crime, it issues an _____.
15. A person has the right to be tried in the _____ in which the crime occurred.
16. A guarantee against being illegally held in prison is called _____.
17. The defendant's privilege against _____ throws the burden of proving guilt on the accusers.
18. The Bill of Rights says that trials must be speedy and _____.
19. A _____ crime is one punishable by death.
20. The accused person is entitled to legal advice or _____.

Choose from the following answers:

Self-incrimination	Guilty
Double jeopardy	Counsel
Habeas corpus	Fourth
Torture	Infamous
Punishments	Fair trial
Grand jury	Trial jury
Supreme Court	District
Fifth	Appeal
Public	Capital
Constitution	Indictment
Excessive	Bail

1
FAIR[T]RIAL

2
FIFT[H]

3
APP[E]AL

4
DOU[B]LEJEOPARDY

5
EXCESS[I]VE

6
BAI[L]

7
GUI[L]TY

8
T[O]RTURE

9
IN[F]AMOUS

10
TRIALJU[R]Y

11
CONST[I]TUTION

12
[G]RANDJURY

13
PUNIS[H]MENT

14
INDIC[T]MENT

15
DI[S]TRICT

16
[H]ABEASCORPUS

17
S[E]LFINCRIMINATION

18
PUB[L]IC

19
CA[P]ITAL

20
COUN[S]EL

Historical Defendant and the Charge

Note: Teachers who wish to choose their own defendants and the charges against them may eliminate the following material.

Presentation Number 1

Let's take some time now to choose the historical defendant we will bring to trial. It should be someone controversial about whom we can find necessary information in our textbooks and school library. It is also very important to determine what charges are to be brought against the defendant. The Bill of Rights guarantees a defendant the right to know the charges against him. If they are not spelled out in detail, he is unable to prepare a defense. The charge should be broad enough, however, to allow both the prosecution and the defense a chance to win according to how well they have prepared their cases. It is one thing to "know" the accused did it; it is another thing to prove it beyond a reasonable doubt to a jury. And the burden of proof rests with the prosecution.

Procedure Number 1

1. Tell the class that some historians believe certain rulers to be great (e.g., Alexander, Caesar, Napoleon); other historians see them as bloody villains. The charge of "disgracing the title of *Great*" is general enough so that both the prosecution and the defense have a chance to win their cases. The prosecution has the task of bringing out the defendant's bad deeds through the sworn testimony of the witnesses; the defense counsel must make evident the good deeds of the defendant. Of course the class must develop criteria for "greatness" before beginning their research. George III may be charged for violating the rights of the American colonists; Louis XVI, for abusing the French people; Kaiser Wilhelm, for starting World War I; Jefferson Davis, for committing treason; and Adolf Hitler, for committing crimes against humanity and waging wars of aggression.
2. Make sure that the class understands that the charge must be considered "criminal" for the Bill of Rights' safeguards to apply. (Amendments 5 and 6 apply to all criminal prosecutions.)
3. Experience suggests that students grasp more easily the principle that the burden of proof falls upon the prosecution if the accused remains silent throughout the proceedings and refuses to testify against himself.
4. Nominations for an historical defendant can be made and a vote held.

Enrichment

Some teachers may wish to schedule several additional lessons to provide the class with more historical background about the defendant to help make the Phase Two preparation more meaningful. Teachers can focus the attention of students on a few selected issues and use these as the basis for homework and class assignments. For example, if Hitler were being tried on the charge of waging wars of aggression, the class could investigate in their texts the whole period of the late 1930s and early 1940s in terms of the defendant's invasions of other lands. They could also consider a possible defense; for example, other rulers such as Joseph Stalin and Genghis Khan committed similar deeds yet were never brought to trial. Are the rulers of nations immune from such charges?

Case Studies: The Bill of Rights

The term *case study* refers to a method of research by which accumulated case histories are analyzed with a view toward formulating general principles.

Presentation

Some of you may be wondering how the Bill of Rights came to be. Frank K. Kelly has written a book tracing the story of each freedom guaranteed by the Bill of Rights. For the next lesson read the first two selections, which deal with the Fourth Amendment's protection against unreasonable searches and seizures and the Fifth Amendment's guarantee of the right to remain silent. Be ready to offer your solutions to the five problems that follow the readings. Don't worry if you differ from your classmates. That's the interesting thing about the Bill of Rights; there is no one correct answer as to what the Bill of Rights means. Even U.S. Supreme Court justices disagree on interpretation. Many important cases are decided by a five to four vote. So use your own ideas.

Fourth Amendment: Explanation

If a policeman wants to enter your home or search your possessions, he has to get a warrant – a legal document issued by a magistrate – authorizing him to do so. The warrant must be supported by an oath or affirmation by the person seeking such authorization, "particularly describing the place to be searched, and the persons or things to be seized."

In a federal case the policeman is required to observe the provisions of the Fourth Amendment to our Constitution. This part of the Bill of Rights guarantees "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The Amendment also provides that "no warrants shall issue but upon probable cause, supported by oath or affirmation."

You cannot get a warrant to search someone's house or seize his private papers just because you have a suspicion that he has done something wrong. You have to justify the warrant on the basis of reason. If you are a policeman, you have to show a "probable cause" for action before the warrant will ordinarily be issued.

These provisions can be traced back – like the other Amendments – to the injustices suffered by American colonists. In the eighteenth century the British King had permitted his judges to issue "general writs of assistance." These writs allowed the king's agents to search any place during the day or night in efforts to uncover contraband goods.

In 1761 James Otis argued in court, eloquently although not successfully, that such writs violated the rights of free men. Otis insisted that "the freedom of one's house" was an essential element of liberty and asserted that a man in his home should be as secure "as a prince in his castle. . . ."

The Supreme Court has ruled that the person and premises of a person "lawfully arrested" may be searched for incriminating evidence without the necessity of obtaining a separate search warrant. It has assumed that police agents may not make "lawful arrests" without reasonable justification. . . .[5]

Fourth Amendment: Problems

1. Three persons die in a collision between a truck and a car. The truck's driver is found by the police, unconscious. An empty liquor bottle is found in the truck, and the driver's breath has a strong odor of alcohol about it. The police order a doctor to take a sample of the unconscious man's blood and test it for alcohol content. The test reveals that the driver was under the influence of alcohol at the time of the accident. He is tried, found guilty of manslaughter, and sentenced to a term of six months to ten years in prison. Lawyers for the defendant appeal through the courts to the U.S. Supreme Court. They argue that the taking of a blood sample while the defendant is unconscious is an unreasonable search and seizure contrary to the Bill of Rights. If you were the judge, how would you decide this case? Give reasons.
2. Police enter the home of a suspected drug addict. They force their way into his bedroom, where he is hiding. As they enter the bedroom, the suspect seizes two capsules or pills from the nightstand and swallows them. The officers try to force open his mouth to get the pills. They fail to do so. The suspect is swiftly taken to a nearby hospital. There his stomach is emptied by a stomach pump. The contents brought out are then examined. Traces of morphine, a narcotic, are found in large

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[5]Frank Kelly, *Your Freedoms: The Bill of Rights.* New York: G. P. Putnam's Sons, 1964, pp. 93-95. Reprinted by permission of the publisher.

enough quantity to conclude that the suspect recently swallowed the drug. The suspect is put on trial, and the hospital report is offered in evidence. The defendant is found guilty and is sentenced to prison. His lawyers appeal the case on grounds of improper search and seizure. How would you decide this problem?

3. Two police officers stop a speeding motorist on a desert road. As they write out his ticket, the officers smell a strong odor coming from the trunk of the man's automobile. The officers ask for permission to take a look inside the trunk. The man refuses to permit the officers to do so. In spite of his refusal, the officers take his keys, open the trunk, and discover a body that later turns out to be the motorist's wife. She has been murdered. Evidence on the body indicates that the motorist has committed the crime.

   The motorist is forced to stand trial. The defense lawyer argues that the body should not be used as evidence against his client since its discovery was the result of an "unreasonable" search. The Bill of Rights does not forbid searches for evidence. It does forbid unreasonable searches. Evidence obtained by the police as a result of an unreasonable search may not be used in court even though the evidence is true.

   The judge agrees that the evidence may not be used. Since the district attorney has nothing else to link the defendant with the crime, the defendant is set free. Do you agree with this decision? Why or why not?

4. You carry a bag as you walk through a strange neighborhood at night. Police officers, alert because of a series of petty thefts, stop you. They demand to see the contents of your bag. May you, on the basis of constitutional right, refuse to permit the officers to examine your bag? On practical grounds alone, would it be advisable for you to let the officers see the contents? Why?

Fourth Amendment: Enrichment

1. Because of a wave of cheating that has swept the school, the principal has placed tiny electronic evesdropping devices called "bugs" in the boys' and girls' rest rooms. From his office the principal can listen to what is being said in the rest rooms. Several students are overheard to say that they cheated on tests. On the basis of this evidence, the students are suspended. Has the principal used a fair means of gathering evidence? Why or why not?

2. The police have a suspect who they think has committed a series of brutal murders. He is traced to a motel. The officers place a "bug" in his room. They overhear him confess his crimes to an accomplice. On the basis of this evidence, the suspect is arrested, tried, and convicted. Have the police used a fair means of gathering evidence? Why or why not? Have you answered this question (number 2) differently from number 1 above? If so, why?

Note: For this amendment and the remaining amendments, interested students may be encouraged to prepare transparencies for use with the overhead projector to present, pictorially, problems for the class to discuss.

Fifth Amendment: Problems

Students may read "Fifth Amendment: The Right To Be Silent," chapter eight in *Your Freedoms: The Bill of Rights,* by Frank Kelly.

A defendant in a burglary case admits to being in the vicinity of the burglarized house at the approximate time of the theft. When asked a subsequent question, the defendant pleads his right under the Fifth Amendment to remain silent. May the defendant refuse to answer any more questions? Why or why not?

Fifth Amendment: Enrichment

A student may be asked to prepare a brief play to be acted out by other members of the class and to be used for discussion. Or the teacher may himself prepare a play. An example of such a play is presented as follows:

The Arrest of A. Hitler

Narrator: The time is today. Adolf Hitler is seated at a desk writing his autobiography. Two police officers knock at his door.

Hitler: Come in! (The police officers enter the room.)

Officer A: Is your name Adolf Hitler?

Hitler: (Rising) Why, yes. But why the interruption? Can't you see I'm busy writing my own history so the world will know the story of my life?

Officer B: We have a warrant here for your arrest. The history books give us reasonable cause to believe that you have committed serious crimes.

Hitler: Crimes? Arrest? On what charges?

Officer A: (Reads from the warrant) "Hitler, you are charged with waging wars of aggression and with committing crimes against humanity."

Hitler: Ridiculous!

Officer A: It is our duty to warn you that you are entitled to a lawyer before and during any questioning by us. If you cannot afford a lawyer, one will be provided free of charge. Any statements you make voluntarily can and will be used against you.

Hitler: I have nothing to hide. I stand on my historical record.

Officer B: The book you are holding – let's see it, please. (Officer takes the book, entitled *Mein Kampf.* Hitler offers no resistance.)

Hitler: I'm confused. Where's your search warrant? I'm in America now, and this is an *unreasonable* search and seizure. It's against the Bill of Rights!

Officer B: No, it isn't. It's a *reasonable* search. We have made a legal arrest, and we are gathering evidence connected with the crime. We don't want the evidence destroyed. (Officer B looks at the book. He thumbs through it. The officer finds a passage and reads it slowly aloud.) Now, what have we here . . . "Today I shall conquer Europe; tomorrow I shall conquer the world. Signed: Adolf Hitler." Are these your words?

Hitler: Certainly! You'll find them in most history books in just about any library. I've already told you I have nothing to hide. I stand on my record! (Pauses, thinks.) Wait a minute! You're confusing me! I don't know what I'm saying! I want my lawyer now! I'm not saying another word!

Officer A: You don't have to. The confession you've just made will interest the district attorney. It will make good reading in court before a jury. It should be enough to convict you. Let's go to headquarters so that you can get a lawyer. (Officers lead defendant off. He offers no resistance. No further questions are asked until Hitler's attorney presents himself.)

1. Should people be informed of their rights? Was Hitler informed of his rights by the police?
2. Did Hitler "confess"? Should his "confession" be read to a jury?
3. Should the police have had a search warrant to seize Hitler's book? Was this an "unreasonable" search?

Sixth Amendment: Problems

Students may read "Sixth Amendment: Fair Trials and Trials by Jury," chapter nine in *Your Freedoms: The Bill of Rights,* by Frank Kelly.

1. Millions of Americans are shocked when, before their very eyes, an important political leader is shot to death while giving a speech on nationwide TV. The suspect is clearly visible on the picture screen as he fires the shot. His attorneys argue that he may not be put on trial anywhere in the country because it is impossible to find 12 impartial jurors. How would you, in the role of a judge, decide the issue?
2. Police officers set a trap for a suspected dope peddler. A police informer, identified only as "John Doe," arranges to make a pickup from the dope peddler. A policeman hides in the trunk

of a car, and John Doe drives the car to a meeting place. There he picks up the suspect and drives to a place named by the suspect. The suspect leaves the car, picks up a package near a tree, returns to the car, and leaves the package in the car with John Doe. The suspect then walks away.

On the basis of his identification by John Doe, the suspect is later picked up and arrested. He is convicted of selling drugs and is sentenced to two years in prison. During the trial the identity of John Doe is kept secret because he is an important police informer. The U.S. Supreme Court overrules the sentence, stating that since the identification of the suspect is based entirely on John Doe's information, cross-examination of this person was necessary to the proper defense of the accused. Do you think that the Court is right in refusing to allow the identity of a police informer to remain secret? Why or why not?

Sixth Amendment: Additional Enrichment

The teacher may arrange with an outsider to enter the class at a prearranged time to act as an "assailant." The assailant may carry a paper weapon in his hand and may pretend to scuffle with the teacher. After a few moments the assailant may flee the room. Students may then be asked to describe what they saw. What was the weapon? In which hand was it? Describe the assailant. What was said? An interesting discussion may be had concerning the fallibility of witnesses and the need for cross-examination.

Eighth Amendment: Problems

Students may read "Eighth Amendment: Reasonable Bail Required – and No Cruel Punishments Allowed," chapter ten in *Your Freedoms: The Bill of Rights*, by Frank Kelly.

1. A local board of education empowers a principal to punish offensive students. According to the rules, "the pupil is to be placed in the pillory during part of each lunch hour for a period to be determined by the principal; his head and hands are to be thrust through the holes made for that purpose; his offense is to be posted nearby for all other students to see." Do you think this punishment violates the Eighth Amendment's prohibition against cruel and unusual punishments? Why or why not?
2. As punishment for violating school rules, the offending boys and girls have their heads shaved. Is this act a violation of the students' constitutional right to be free from cruel and unusual punishments? Why or why not?

3. A teen-aged boy is accused of stealing a new car from its owner. The judge sets the trial for a date four months away and orders bail set at $2,000. Is the judge's action fair?
4. A man is involved in a serious automobile accident that results in the death of three people. He was drunk at the time of the accident. This is the fifth time he has been involved in an accident while drunk. The judge orders him held for trial and refuses to set bail. Is the judge's action fair?
5. Several teen-aged boys and girls are arrested for disturbing the peace. They were overturning garbage cans and honking auto horns to celebrate their team's victory. The judge finds them guilty and sentences each to pay a fine of $100 or to spend a month in jail. Is the judge's action fair?
6. A teen-aged boy is arrested for speeding. At the time of his arrest he was driving nearly 100 miles per hour. The boy pleads not guilty, and a date for the trial is set. In the meantime he is released without bail in the custody of his lawyer. Is the judge's action fair?

CHAPTER 3

Sample Lesson Plans: Phase One, Part 2

The teacher should now discuss problems from the previous lesson. He should help students see that the Bill of Rights is an organic document whose provisions are open to debate and controversy. Students should be encouraged to volunteer their opinions. A vote may be taken to see how the majority stands on each problem.

Unreasonable Search and Seizure

In *Briethaupt v. Abram* the U.S. Supreme Court held that the taking of blood from an unconscious person by police officers for a sample test did not constitute unreasonable search and seizure. But in a 1952 case, *Rochin v. California,* the U.S. Supreme Court held that the action of the police was a violation of the rights of the accused when a stomach pump was used to obtain evidence. The use of the pump, the court stated, was an unreasonable search, and the seizure of the evidence was therefore illegal. The prisoner was set free.

The U.S. Supreme Court has thus ruled that states may not use outrageous or shocking methods of gathering evidence. In the Rochin case Justice Frankfurter wrote the following:

> This is conduct that shocks the conscience. Illegally breaking into the privacy of the petitioner, the struggle to remove what was there, the forcible extraction of his stomach's contents – this course of proceeding by agents of government to obtain evidence is bound to offend even hardened sensibilities. They are methods too close to the rack and the screw to permit of constitutional differentiation.

Mapp v. Ohio made clear that state police as well as federal officers may use evidence they seize only (1) if they previously obtain a warrant specifying the piece of evidence; or (2) if the person being searched gives his permission; or (3) if the search is incidental to a lawful arrest.

The U.S. Supreme Court rendered its opinion in the case as follows:

It is basic under the Fourth Amendment that no person can be arrested simply because he looks suspicious. An arrest may be made either with or without an arrest warrant – but in either case the officer who makes the arrest must have "probable cause" or "reasonable grounds" for believing that the person he is arresting has committed a crime. If an officer actually sees the crime being committed, he can arrest the person who committed it right on the spot. . . . At other times officers have arrested people who were acting suspiciously or were sneaking around corners and the like. Generally, it has been said that this kind of behavior does not give "probable cause" on the theory that innocent people have a right to act suspiciously if they want to, at least so long as they don't frighten or harm anyone. There is another basic principle of arrest; if the officers don't have probable cause at the time they pick a man up or bring him in, then the arrest is unlawful even if, in the course of searching or questioning the suspect, something turns up which would have given ample cause to arrest him had the officers known about it in the beginning.[1]

Right To Remain Silent

Has the burglar waived his right to silence when he admits to being in the vicinity of the crime? The U.S. Supreme Court has ruled in *Blau v. United States* that ". . . if the witness himself elects to waive his privilege, as he may doubtless do, since the privilege is for his protection and not for that of other parties, and discloses his criminal connections, he is not permitted to stop, but must go on and make full disclosure. . . . "

The teacher may wish to bring up the issue of whether law officers are unfairly hampered in their investigations if those who can give the most information about a crime are allowed to remain silent. Are we making it too easy for guilty men to go free to commit more crimes?

Introduction to Due Process

Due process is a term used here to mean the observance of the procedural guarantees embodied in the Bill of Rights to protect a defendant in a criminal trial.

Presentation

We have learned that fair trials don't just happen. The principles and rules behind them have grown out of hundreds of years of experience. I'm going to issue each one of you some materials entitled "Due Process and the Defendant." The first part tells about the steps we will take in guaranteeing our defendant due process of

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[1]Donald Parker, Robert M. O'Neil, and Nicholas Econopouly, *Civil Liberties: Case Studies and the Law.* Boston: Houghton Mifflin Co., 1965, pp. 39-40. Reprinted by permission of the publisher.

law. The federal government and most of the states have similar procedures. The second part outlines the roles available from which you will be asked to choose three. Every effort will be made to assign you to one of your choices.

Due Process and the Defendant

This discussion of due process and the defendant is separated into the parts of a fair hearing and the roles that are available.

Steps in a Fair Hearing

1. *The preliminary examination.* The preliminary examination is not a trial; its purpose is to notify the accused of the charges against him. Then a judge listens to the prosecution's evidence to see whether probable cause exists to hold him for trial at some future time. At this point the accused may be set free or bound over for a hearing before a grand jury. If the accused is not released, the judge must decide whether or not to allow bail.

   Roles: Judge, prosecutor, defense counsel, witnesses, bailiff, defendant.
2. *The grand jury.* The grand jury also makes no effort to determine whether a person is innocent or guilty. It does not usually hear the defendant's case. All it hears is the prosecutor's side. Its job is to decide whether the evidence presented by the prosecutor justifies bringing the accused to trial. If not, then he is released. Like the preliminary examination it is another safeguard that a person will not be tried on flimsy evidence or on no evidence at all.

   Roles: Foreman of grand jury, prosecutor, witnesses, grand jurors.
3. *The trial.* The purpose of a criminal trial is for a jury of twelve to decide whether the defendant is innocent or guilty of the charges against him. Its decision must be unanimous; all twelve must vote innocent or guilty. If the jury is unable to come to unanimous agreement, it is called a "hung jury." In that case the trial must be held again before a different jury. The defendant presents his side of the story through counsel and has the right to cross-examine prosecution witnesses, again through counsel, to discredit their testimony. In our system all men are presumed innocent until found guilty. Therefore, the accused does not have to "prove" his innocence; instead, it is up to the prosecutor to prove guilt.

   Roles: Judge, prosecutor, defense counsel, witnesses, bailiff, defendant, trial jurors.
4. *The appeal.* Trials have to be conducted under certain rules. It is not always easy to apply these rules. For instance, the Bill of Rights calls for an "impartial" jury. If the loser in a court case feels that he has not received a fair trial because the jury was exposed to a prejudiced newspaper or mural, he may appeal the decision to a higher court. If this court of appeals agrees with the arguments of the loser's attorneys that the jury was prejudiced against him, it may order a new trial before jurors who were not exposed to the biased publicity.

   Roles: Counsel, bailiff.

5. *The newspaper and murals.* The newspaper and murals will publicize the proceedings. The Bill of Rights grants a person the right to a fair trial, but it also guarantees a public trial and freedom of the press. Sometimes these rights clash. A newspaper or mural may so inflame public opinion against a defendant that a fair-minded jury could not be picked. The newspaper and mural staffs must be responsible and not convict the defendant before his trial. For if the accused loses his case and can show unfair news coverage to an appeals court, he might win a new trial.

   Roles: Editors and staff members

The Roles

Each student may choose any three roles from this list. Choices should be written down in the order of personal preference. Every effort should be made to honor at least one choice in making the assignments for the trial. The teacher will place those who want to be counsel and witnesses in either the preliminary examination, grand jury hearing, or trial.

Role: Newspaper staff
Purpose: To publish a newspaper about defendant and his trial
Number of students: 4-8
Description: Include front-page headline announcing arrest, news stories about defendant, interviews with counsel, opinion page, letters to the editor, and so on. Use history texts and library books as references.

Role: Mural staff
Purpose: To show pictorially how defendant will be granted due process of law and justice
Number of students: 4-8
Description: Draw scenes to illustrate defendant passing through the various steps of a fair hearing. Add captions to clarify your work. Use the Bill of Rights as a guide. Construct the murals so that they can serve as backdrops for the trial.

Role: Prosecutor (district attorney)
Purpose: To prove defendant's guilt
Number of students: 3
Description: Work with witnesses assigned to you. Help in choosing their historical names and in preparing the testimony. Prepare opening and closing statements for the jury in which you outline and summarize your case. Refer to library and class references.

Role: Defense counsel
Purpose: To disprove case
Number of students: 1-2
Description: Like the district attorney, work with your assigned witnesses in choosing their historical names and in preparing the questions and answers for use as testimony. Prepare opening and closing statements for the jury. Base your work on reference books.

Role: Witnesses
Purpose: To present historical facts under oath
Number of students: 8-14 (assigned to grand jury, preliminary hearing, or trial)
Description: Choose an historical name. Prepare at least 20 questions and answers based on reference books. Relate the questions and answers to proving or disproving the charges against defendant. Review your testimony with counsel to whom you are assigned. Anticipate cross-examination questions that the opposing attorney might ask. These questions and answers will be unrehearsed.

Roles: Grand jury foreman, preliminary hearing judge, trial judge
Purpose: To serve as presiding officers
Number of students: 1-3
Description: Explain the purpose of the activity to the class. Study and follow the procedure sheets that will be issued to you. Take charge of the activity and keep it moving smoothly.

Roles: Appeal court lawyers
Purpose: To argue for or against this topic: Defendant did not receive a fair trial in this school, and a new one should be ordered.
Number of students: 2-6
Description: Assume that defendant has been found guilty. One group of students represents him and attempts to convince a faculty supreme court that due process of law was denied; that is, that the trial was unfair. Another group represents the prosecution and argues that the trial was fair and that the verdict of guilty should stand. Reference materials will be issued.

Procedure

1. *Try to "sell" each role.* Student preference should not be the sole criterion for assigning students to activity groups. The teacher's knowledge of a student's general background should also be taken into account, for it is essential that groups be well balanced. Those who are assigned as counsel and witnesses should also be assigned to either the preliminary examination, the grand jury hearing, or the trial.
2. Appoint able, aggressive individuals as counsel, judges, grand jury foremen, newspaper editor in chief, and mural staff chairman. Encourage only the most able to attempt the appeal.
3. The preliminary examination and the appeal may be dropped if the teacher feels that his class is unable to handle them.
4. The minor roles of bailiff and defendant can be assigned to volunteers from the newspaper or mural staffs at the start of the Phase Two preparation. Jurors also might come from these

groups. However, a more realistic experience can be achieved by inviting another class to observe the trial and to serve as the grand and trial jurors. Supplementary materials are included that show the class how to choose a trial jury.

5. It may be useful to schedule auditions for the roles of judge and counsel in classes where many students volunteer for these parts. Allow each interested student to give a one-minute talk. Prospective attorneys can try to convince a jury that the defendant is either innocent or guilty. Prospective judges can instruct a trial jury on their duties. The class may rate each speaker on a scale covering excellent, good, fair, and poor. The criteria for evaluation may be interests, persuasiveness, and loudness. The form may be placed on the chalkboard for students to copy on their papers. This activity encourages students to practice listening skills.

   Some teachers prefer to have members of the class vote for those whom they wish to have the major speaking roles. This step may be taken after the auditioning has been completed.

Problems Involving the Bill of Rights

Students should read the chapter entitled "Sixth Amendment" in *Your Freedoms: The Bill of Rights* and write solutions to problems presented there.

Pretrial Publicity

Can a jury be completely isolated from pretrial publicity? The law does not demand the impossible. Chief Justice Waite once observed (in *Reynolds v. United States*) that "in these days of newspaper enterprise and universal education, every case of public interest is almost as a matter of course brought to the attention of all the intelligent people in the vicinity, and scarcely anyone can be found among those best fitted for jurors who has not read or heard of it, and who has not some impression or some opinion in respect to its merits." Ask whether Lee Harvery Oswald, suspected assassin of President Kennedy, could have received a fair trial.

Confrontation of Accusers

The Bill of Rights guarantees a person accused of a crime the right to confront his accusers. Confrontation gives a defendant the opportunity to challenge an accuser in open court. An accuser can be observed by the jury. The manner in which he gives his testimony and his appearance as he does so may be taken into consideration by the jury in deliberating on a verdict. Discuss the problem involving a

police informer. That is, if a police informer gives valuable aid to law enforcement personnel, then exposing him is a blow against crime reduction. In addition, confrontation may help criminals escape justice.

Additional Activities

The activities suggested here are presented to bring Phase One of the lesson plans to completion.

A. Scenes from *Twelve Angry Men*[2]
   1. Interested students volunteer to read scenes. Approximately 15 minutes are needed during each of three class meetings to complete the reading of the play.
   2. Sample discussion questions.
      a. Who do you think made the best juror? Why?
      b. Did the young defendant receive due process? Why or why not?
      c. According to the play, what are some of the strengths and weaknesses of our system?

B. Written and Oral Analyses

Students read and react to selections dealing with the Eighth Amendment concerning reasonable bail and cruel and unusual punishment.

Is putting a student in a pillory or shaving his head constitutionally acceptable? The point at which a sentence becomes cruel and unusual remains open to debate. In an 1889 case, *In re Kemmler,* the U.S. Supreme Court ruled that "punishments are cruel when they involve torture and a lingering death, . . . something inhuman and barbarous, something more than the mere extinguishment of life."

It has been ruled that physical suffering is not the only test of cruel punishment. "Shame and humiliation and degradation and mental torture" also fall within the constitutional prohibition *(Davis v. Berry).*

Some state courts will declare punishments to be cruel and unusual only "when the punishment proposed is so severe and out of proportion to the offense as to shock public sentiment and violate the judgement of reasonable people" *(State v. Becker).*

Former Supreme Court Justice Arthur Goldberg has written (in *Ex parte Wilson*) "that as the court stated in 1885, 'what

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[2]See *Twelve Angry Men,* in *Great Television Plays.* Edited by William I. Kaufman. New York: Dell Publishing Company, 1969.

punishments shall be considered as infamous may be affected by the changes of public opinion from one age to another.' In former times, being put in the stocks was not considered as necessarily infamous . . . but at the present day it might be thought an infamous punishment."

Another quotation worth study is the following:

> It is reasonable, of course, for a court in setting bail to take account of various factors – the seriousness of the crime; the defendant's economic position [and] . . . his past criminal record, if any; and particularly, whether he has ever "jumped bail" in the past. For certain serious offenses, such as murder, bail is simply not available; for others, it is entirely up to the court whether the defendant may be freed at all before trial.[3]

C. Case Study

Students should read assigned selections as follows:

1. Donald Parker, Robert M. O'Neil, and Nicholas Econopouly. *Civil Liberties: Case Studies and the Law.* Boston: Houghton Mifflin Co., 1965.
2. *Liberty Under Law.* Edited by Charles Cutler and Craig Pearson. Middletown, Conn.: American Education Pubns., 1966, pp. 27-30.

Some students will be editors assigned to cover the trial for the class newspaper. These students will be free to decide what stories to place in the newspaper and how they are to be written since the Bill of Rights guarantees freedom of the press. But what if the defendant complains that the newspaper made his jury partial and denied him a fair trial? Here we see a conflict between different kinds of rights. Which right takes precedence? Who decides?

A similar case *(Rideau v. Louisiana)* was tried in Lake Charles, Louisiana, in 1951. On three occasions before the trial below, the defendant Rideau had been shown on television confessing his crime. The trial court refused the defendant's request for a change of venue. On appeal the case reached the U.S. Supreme Court. After we finish reading, some of you may act as U.S. Supreme Court justices and others as attorneys in the arguments before the court.

The questions considered by the court were the following:

1. Should Rideau have been freed?
2. Should he have been granted a new trial?
3. Should the court have permitted the death penalty to be carried out?

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[3]See Parker, et al., *op. cit.*, p. 43.

Nine members of the class should be chosen to play the roles of U.S. Supreme Court justices. One group of students may argue for Rideau, another group for the state. Members of the court vote, giving their reasons. A simple majority is all that is needed to reach a decision.

The conviction below was set aside by the U.S. Supreme Court on the ground that due process had been denied to the defendant. The way was thus made clear for Rideau to be tried again on the same charges but in another community. The majority felt that due process was violated because Rideau had been "convicted" by the news media before his trial was actually held. The minority, however, held that there was no proof that TV had "fatally infected" the trial. It stated, "We cannot guarantee a society free from newspapers. What is important to a fair trial, reasoned the minority of justices, is that newspapers and TV do not cause jurors to make up their minds about a case before they hear all the facts involved."

The members of the class may compare the court's decision with their own. Students should be reminded that a court of appeals usually does not decide whether a defendant "did it." Instead, the court reviews the transcript of the trial below to determine whether it was conducted fairly. If the court finds an error that led to a conviction, it orders a new trial. The teacher may wish to bring out the importance of dissenting opinion. Courts do change their minds; today's dissent may be tomorrow's majority view.

Very few cases ever reach the U.S. Supreme Court. Unless a federal question is involved, the highest court of each state is normally the final arbiter. A federal question is one that touches on the constitutionality of any law, no matter at what level of government the law originates.

D. Citizenship Quiz (Review)

The questions presented here are taken from the *National Citizenship Test*, presented by CBS News.[4] First, students should read the story very carefully. Then, on a separate piece of paper, they should answer the questions about the rights of the people involved.

National Citizenship Test

The scene is the living room of a private home. The father of the house has just finished breakfast. His twenty-two-year-old son is in his room. The doorbell rings. Policeman: "Good morning, sir. I'm Sergeant

[4] *The National Citizenship Test.* Edited by A.V. Westin. New York: Bantam Books, 1965, pp. 13-19. Reprinted by permission of the publisher.

Lynch of the Metropolitan Police Department. I'm sorry to tell you that Mr. Miller, who's the manager of the A & W Jewelry Store on Main Street, has reported that your son Bill took some watches from his store. I have a warrant here to search your house for the watches that were stolen last night."

Question 1: At this point Sergeant Lynch must be allowed into the house to search for the watches. True or false?

In the next scene Sergeant Lynch enters young Bill Wilson's room. The officer looks quickly around the room, walks to the bed, and turns the pillow over. He then goes to the desk where Bill is sitting and opens and shuts a drawer rapidly.

Policeman: "You're Bill Wilson, aren't you? I'm Sergeant Lynch of the Metropolitan Police Department. I want you to tell me where you were between 6 and 6:30 last night. Were you downtown?"

Question 2: After he has identified himself to Sergeant Lynch, Bill Wilson must answer any questions he is asked. True or false?

After questioning, Bill Wilson goes to the police station with Sergeant Lynch. Bill is still behind bars 48 hours after his arrest.

Wilson (To jailer): "What am I charged with? Why am I being held? I want to get out of here now! Tell me why you are holding me or let me out! What am I charged with?"

Question 3: At this point in our story, Bill Wilson has the right to know the charges against him. True or false?

Bill is on trial for robbery. The judge and jury are listening to the district attorney: "And here's something the defense counsel doesn't know that proves beyond a doubt that Bill Wilson is guilty. I have a signed, sworn statement here from Charles Miller of the A & W Jewelry Store. In this statement Mr. Miller says that he saw the accused, Bill Wilson, come into the store and then rush out with the tray of watches under his coat. Mr. Miller is out of town and can't be reached for a few weeks, but his sworn statement proves to me that Bill Wilson is guilty as charged."

Defense counsel: "Objection!"

Question 4: Mr. Miller's sworn statement, which definitely places Bill Wilson at the scene of the crime, may be introduced as evidence. True or false?

Bill Wilson is found not guilty. A month later the district attorney releases a photograph as new evidence. The photograph clearly shows young Wilson running away from the jewelry store with the tray of watches under his jacket. The district attorney moves for a new indictment, convinced that he will get a conviction on the same charge this time.

Question 5: Because of the new evidence just revealed, the district attorney may reopen the case on the same charge. True or false?

Answers

Question 1 is true. Sergeant Lynch must be allowed into the house to search for the stolen property. He identifies himself as an officer of the law and presents a search warrant, satisfying the basic requirements of the Fourth Amendment for a search warrant. That is, the search warrant describes the places to be searched and identifies the object of the search.

Question 2 is false. Bill Wilson does not have to answer any of Sergeant Lynch's questions once he has identified himself. The Fifth Amendment to the Constitution provides that no individual shall be required to testify against himself in a criminal case. Since any statements Bill Wilson makes at this time may be used against him later in court, he may not be required to answer Sergeant Lynch's questions.

Question 3 is true. It is a violation of an individual's historic rights to be held for an unreasonable amount of time without being told the charges against him. In this case Bill Wilson may seek a writ of habeas corpus, which requires a court hearing at which he would have to be present. During the court hearing he must be told the charges against him or be released.

Question 4 is false. Article 6 of the Bill of Rights guarantees that the accused will be confronted with the witnesses against him. Unless Mr. Miller appears so that the defense can cross-examine him, his accusations against Bill Wilson will be inadmissible.

Question 5 is false. Since Bill Wilson was found not guilty a month ago, he is protected by the Fifth Amendment to the Constitution, which provides that no person shall be put in jeopardy twice for the same offense – the concept known as "double jeopardy." Thus, a man found innocent of a criminal charge may never again be indicted and tried for the same crime in the same court.

The National Test Sample

The following table shows the breakdown of the national test sample by individual questions The percent of correct answers to each question is given in italics.

Question	*Subject*	*True*	*False*
		(In percent)	
1	Search warrant	*87*	13
2	Compulsion to answer	20	*80*
3	Knowledge of charges	*93*	7
4	Sworn statement	60	*40*
5	New evidence	35	*65*

A specially selected cross-section of American citizens has been given the same story and questions. The results of this national test sample have been tabulated. After we correct our work, each of you

will be able to compare his answers with those of your classmates and with those of a cross-section of your fellow Americans.

CHAPTER 4

Sample Lesson Plans: Phase Two

The purpose of Phase Two is to enable students to prepare and present a mock trial. This promotion of active learning is the heart of what this publication is attempting to achieve. Students work alone and in small groups to prepare the newspaper, mural, preliminary examination, grand jury hearing, trial, and appeal. The teacher is thus free to move from group to group and can use this time to review the assignments and procedures, answer questions, clarify points in question, and evaluate students individually. In this manner students are given appropriate practice and knowledge of results before they present their "finished product."

In Phase Two students use information from many sources to prepare their assignments. Where it is possible to work in the school library, students can be encouraged to use the card catalogue, the *Readers' Guide to Periodical Literature,* and books on the reference shelves.

All of the activities here involved are prepared simultaneously. Though a defendant may be freed at any stage of the judicial process, the class should be made to understand that the trial will proceed regardless of that possibility.

Initiation of Phase Two

The procedure to be observed in the first part of Phase Two is as follows:

1. Assign major roles to certain students for the preliminary hearing, the grand jury, the trial, and the appeal. Assign someone to take charge of the mural project.
2. Assign students to groups and issue procedure materials. Signs identifying the newsroom, the district attorney's office, and so forth may be made to indicate meeting places for each committee.
3. Choose the defendant and bailiff from among the newspaper and mural staffs and issue to them procedure and assignment materials. Jurors may also come from these two groups. When a

teacher wishes to select a jury from another class, he may want to reserve time for that purpose before the trial begins. Or he may want to send the judge, the district attorney, and the defense counsel to the classes invited to the trial to choose the jury members. The procedure to be observed in the selection of jurors is as follows:

a. Judge enters the courtroom. Bailiff tells spectators to rise for the judge and to be seated when the judge has taken his place.
b. Judge explains to the spectators what will take place. He tells why it is important that a fair jury be picked, what types of challenges are allowed, and what is meant when a student is dismissed. *Note:* The judge should be careful to prevent hurt feelings on the part of those who are excused from jury duty. They must be made to understand that dismissal from jury duty does not reflect unfavorably on their mental capabilities.
c. Judge asks bailiff to call names at random from the list of prospective jurors. The list of names should be compiled beforehand from the members of the classes attending the trial.
d. Bailiff calls the names of 12 jurors, asks the jurors to stand in the jury box, and swears them in by saying, "Raise your right hand and answer 'I do' after my question. Do you swear to tell the truth, the whole truth?" He then tells the prospective jurors to be seated.
e. Judge should again remind prospective jurors that if they are excused it is because the court feels they would be unable to vote fairly and not because they are stupid.
f. Judge asks district attorney and then the defense counsel to question each prospective juror briefly. After questioning a student, counsel for defense may say, "Your Honor, this person is acceptable to the defense." Or, "Your Honor, the defense takes exception to this student and will use its first peremptory challenge." Or, "The defense challenges this person because _____." Remember that the judge may accept or reject all challenges for cause but must accept the six peremptory challenges granted to each side.
g. If a prospective juror is excused by the judge, he is told to return to his seat in the audience. When the original 12 students have been examined, it will be necessary, if some have been excused, for the judge to ask the bailiff to call additional names. The examination then continues.

h. When 12 jurors are found who are satisfactory to both sides, the judge asks the jurors to elect a jury foreman; or he may appoint one himself. The judge then explains the foreman's duties; that is, he must take charge of the jury when it meets to reach its decision, organize a discussion, conduct all voting, and announce the result to the court. The judge should also explain to the jurors how many votes are needed to convict or set free and which side proves guilt.
Note: It is wise to choose several alternate jurors to listen to the evidence, but alternate jurors may vote only in the absence of a regular juror.

i. The judge reminds jurors not to talk about the trial with anyone and to return to the jury box each day of the trial.

j. The judge closes the session by stating, "This court is adjourned."

4. Find your role and prepare your assignment as follows:

Role: Judge
Assignment:

a. Study the suggested procedures to be followed at the choosing of a trial jury. Use them during the class proceedings.

b. Prepare the talks you will make to the courtroom spectators to help them better understand what we are doing. (Use note cards if you wish.)
   (1) Short statement on what will take place, importance of selecting a fair jury, two types of challenges, and what is signified by the dismissal of a student from court
   (2) Short statement explaining duties of foreman
   (3) Short statement explaining to jurors such ideas as the "burden of proof" and the number of votes needed to convict or set free

c. Additional information on how juries are chosen can be found in a book entitled *Law,* by James Eichner; and *The Law: It's on Your Side,* a book written by Frank Denman.

Roles: Prosecutor and defense counsel
Assignment:

a. Study the suggested procedures to be followed at a jury selection. Use them during the class proceedings.

b. Develop your strategy. What kinds of questions will you ask? Remember that you want to include students who you feel will be receptive to your case and exclude those you feel will favor the other side.

c. Further information about jury selection is contained in the books entitled *Law,* by James Eichner; and *The Law: It's on Your Side,* by Frank Denman.

Role: Bailiff

Assignment: study the suggested procedures to be followed at a jury selection. Use them during the class proceedings.

5. Decide on witnesses.
   a. Show a filmstrip or motion picture that deals with the defendant. Students can suggest witnesses from those who would be in a position to testify about the defendant's actions.
   b. List possible witnesses on the boards. If Adolf Hitler is the defendant, the witnesses may include Anne Frank, Winston Churchill, Benito Mussolini, Joseph Stalin, a concentration camp guard, and so forth. Encourage students to avoid obscure personalities and choose witnesses for whom adequate reference materials are available in class texts and school library.
   c. Choose students for the witness roles.
      (1) It is acceptable that the same historical witness be played by one student at the preliminary hearing, by another before the grand jury, and by a third at the trial itself.
      (2) The same student may serve as two witnesses; e.g., Sir Francis Drake at the grand jury hearing and Sir Walter Raleigh at the trial. Encourage students who complete their testimony early to undertake more than one assignment.
      (3) Make sure the class understands that a defendant may take advantage of the Fifth Amendment and refuse to testify when both sides have previously agreed to his doing so. To prevent frequent use of the Fifth Amendment on the part of witnesses, advise them that they have been granted immunity and will not be prosecuted for their acts.
      (4) Focus the attention of the participants on the important issues they should emphasize at the trial. Discuss some of the points that both sides may use before students begin their research.

Organizing the Groups

A. Newspaper

The teacher may choose an editor-in-chief, or the staff may elect one. Staff members should take responsibility for certain sections of the newspaper and should notify the teacher of their assignments.

Work should begin by the end of their first group meeting. A supply box should be available in which are contained rulers, scissors, tape, tracing paper, ditto masters and carbons, and so forth.

B. Murals

Either the teacher or the mural committee selects the committee chairman. By the end of their first meeting, this group should present a decision on what drawings will best illustrate the practice of following due process of law and thereby making sure that justice is done. This group should also have access to a supply box.

C. Grand Jury Foreman and Judges

Students portraying the grand jury foreman and judges may begin work on their introductory remarks. They should explain to the class the purposes of the judicial proceeding at which they will preside. (Examples are given in the procedure and assignment materials.) They should review the list of suggested procedures and either adapt them or use them as they are during the trial.

D. Counsel and Witnesses

Students assigned as counsel and witnesses should meet in their respective activity groups; i.e., in groups responsible for preliminary examination, grand jury hearing, trial prosecution, and trial defense. The students should decide on an historical name for each witness and should notify the teacher as soon as possible. Adjustments may have to be made if both the prosecution and defense in trial court choose the same historical witness. Witnesses should begin the researching and writing of their questions and answers. They should be encouraged to find information about their historical "selves" and about the defendant.

Student witnesses should understand that they are to put statements into the testimony that prove or disprove the charges against the accused. Witnesses should tell a story based on their historical research rather than simply reply yes or no to questions from counsel. Counsel and witnesses are expected to review their direct testimony before the trial begins, but they should understand that cross-examination at the trial will be conducted by the counsel for the other side. Since only the prosecution appears at the grand jury hearing, members of the grand jury may ask witnesses questions related to the charges. As an aid to intelligent cross-examination, the teacher should supervise an exchange of historical names by counsel to permit more extensive research. Counsel members are responsible for the overall strategy of their case. They should begin work on their opening and closing statements to the jury and should help witnesses with their research and testimony.

E. Appeal

Since most students have limited background in appellate procedure, the teacher may have to spend more time with this group. The procedure and assignment materials in this publication should provide the necessary background for both teachers and students.

Appellants (attorneys for the convicted defendant who is bringing the appeal to the higher court) and respondents (attorneys representing the class and responding to or answering the arguments of the defendant) should divide the issues on their assignment page. One student from each side should be prepared to argue the issues, which are the following:

1. The right to silence (Fifth Amendment)
2. The right to be free from unreasonable searches and seizures (Fourth Amendment)
3. The right to have an impartial jury (Sixth Amendment)
4. The right to bail (Eighth Amendment)

Small-Group Work

In small-group work the teacher meets with each group to review and clarify assignments and procedures. Students taking part in the preliminary examination, grand jury hearing, trial, and appeal must understand the procedures thoroughly if the trial is to proceed smoothly. The procedures to be observed are as follows:

1. As a basis for their historical testimony, witnesses should read about themselves and the defendant. They should write out questions and answers that tell a story proving or disproving the charges against the defendant. The teacher can provide a book list such as the following:

The Trial of Adolf Hitler: Suggested Readings

Archer, Jules. *Twentieth Century Caesar: Benito Mussolini.* New York: Julian Messner, Inc., 1964.

Becker, Carl. *The Past That Lives Today.* Morristown, N.J.: Silver Burdett Company, 1961.

Carr, Albert. *Men of Power* (Revised edition). New York: Viking Press, Inc., 1956. Chapters on Hitler, Mussolini, Stalin.

Donovan, Frank. *Famous Twentieth Century Leaders.* New York: Dodd, Mead & Company, 1964. Chapters on Hitler, Stalin, Churchill, and Mussolini.

Douglas, William O. *Almanac of Liberty.* New York: Doubleday & Company, Inc., 1954. See index for references to Nazi war crimes trials and *ex post facto.*

Frank, Anne. *Diary of a Young Girl.* New York: Doubleday & Company, Inc., 1952.

Goodrich, Frances, and Albert Hackett. *Diary of Anne Frank.* New York: Random House, Inc., 1954.

The Human Adventure: Readings in World History. Volume Two. Edited by Sydney Eisen and M. Filler. New York: Harcourt, Brace & World, Inc., 1964. Selections found useful include "Hitler's Theories"; "German Troops Occupy the Rhineland"; "The Meeting Between Hitler and the Austrian Chancellor"; "Appeasement at Munich"; "The Fall of France"; "Churchill Assumes Direction of the War"; and "Nazi War Crimes."

Kennedy, John F. *Profiles in Courage* (Memorial edition). New York: Harper & Row Pubs., 1964. See chapter on Robert Taft and his opposition to the Nazi war crimes trials.

Lamb, Harold. *Genghis Khan and the Mongol Horde.* New York: Random House, Inc., 1954.

Leckie, Robert. *Story of World War II.* New York: Random House, Inc., 1964.

McKown, Robin, *Seven Famous Trials in History.* New York: Vanguard Press, Inc., 1963. Chapter on Nuremberg war crimes trials.

Oliver, Donald. *Nazi Germany.* Middletown, Conn.: American Education Pubns., 1968.

Savage, Katharine. *Story of the Second World War.* New York: Henry Z. Walck, Inc., 1958.

Schnabel, Ernst. *Anne Frank: A Portrait in Courage.* Translated by Richard and Clara Winston. New York: Harcourt, Brace & World, Inc., 1958.

Seeger, Elizabeth. *Pageant of Russian History.* Binghamton, N.Y. : Vail-Ballou Press, 1950. Sections on Genghis Khan and Joseph Stalin.

Shirer, William L. *Rise and Fall of Adolf Hitler.* New York: Random House, Inc., 1961.

Shirer, William L. *Rise and Fall of the Third Reich.* New York: Simon & Schuster, 1960.

Snyder, Louis L. *Hitler and Nazism.* New York: Franklin Watts, Inc., 1961.

2. Counsel should plan general strategy and help with testimony. They can help witnesses anticipate cross-examination by posing as opposition counsel. Counsel should complete their opening and closing statements to the jury and go over the direct testimony with their witness.
3. Grand jury foreman and judges should review procedures with the teacher. They may wish to revise the procedures, but any change should be approved by the teacher so that all the participants can be notified.
4. The news staff should be taught how to print or type articles on ditto masters. The newspaper should be ready for duplication and stapling before the trial begins and should be issued and collected each day of the trial. Let students use by-lines in the newspaper and murals.

5. Students should be encouraged to rehearse their oral work within their activity groups *before* the trial.
6. Interest wanes during the end of Phase Two preparations as the students complete their assignments. To overcome this situation, the teacher may suggest that the students take on an additional role of a witness or make programs, invitations, costumes, and props.
7. Decisions should be made concerning the room arrangements for the trial presentations. Students who complete their Phase Two preparation early may make table signs indicating "district attorney," "defense," and so on.
8. Teachers are urged to give the activity groups oral and written "checkup" quizzes as the Phase II preparation period draws to a close to provide feedback for the students.
9. Trial participants should be referred to their assignment and procedure sheets, which contain examples of good oral presentations. These sheets can serve as models (1) for the student, to judge the effectiveness of his own responses; and (2) for the teacher, to evaluate students.

Culminating Activity Program

The suggested schedule for the culminating activity program is as follows:

First day: The preliminary examination
Second day: Grand jury hearing; choosing trial jury
Third day: Jury trial
Fourth day: Appeal

Before each day's program, the students should check the following:

1. Has the room been rearranged to simulate a courtroom?
2. Are the table signs identifying participants in place?
3. Are the murals hung?
4. Are the newspapers ready for distribution, and do the student editors understand that they are to issue and collect them at the end of each day's activity?
5. Are the participants present and ready?
6. If another class has been invited, have the members of the class been notified?

Note: Problems in communication can be avoided by equipping the witness stand with a microphone and loudspeaker.

Three faculty members should be asked to serve on the court of appeals, and a chief justice should be appointed. Members of the court should be given copies of the procedure materials and should be told that they may ask questions of student attorneys during oral

arguments. The justices may give recognition to a "best speaker" or "best speakers" as well as to the winning side.

In an attempt to make the culminating activity program more meaningful to the class and to provide material for review, each student may be asked to fill out the following dittoed form:

Directions: Please bring this form to class each day of our trial. As you watch the proceedings, fill in the information called for.

A. Preliminary Examination
   1. What is the purpose of a preliminary examination?
   2. What specific things did each witness tell about the defendant's guilt?
   3. What were the results of the preliminary examination?

B. Grand Jury Hearing
   1. What is the purpose of the grand jury hearing?
   2. How does it differ from the other type of hearing?
   3. What specific things did each witness say about the defendant's guilt?
   4. What were the results of the grand jury hearing?

C. Jury Trial
   1. What are some of the rights guaranteed to criminal defendants?
   2. What did each witness for the prosecution say about the defendant's guilt?
   3. What did each witness for the defense say about the defendant's innocence?
   4. What were the results of the jury trial?

D. Appeal
   1. Was it fair to use the defendant's "confession" against him?
   2. Was it fair to use evidence seized without a warrant?
   3. Was it fair to try him before a jury that had access to a class newspaper devoted to the life of the defendant?
   4. Was it fair to deny him bail?

While the justices are meeting to decide the case, members of the class may discuss the way they feel about each of the issues. A class vote may be taken on whether or not the defendant should receive a new trial.

To be avoided are the following:

1. Counsel arguing with each other during the trial. Participants should understand that questions are to be directed to the witnesses or to the judge, not to each other.
2. Running out of time. The judge or foreman should be told to limit questions and cross-examination if time is a factor and should try to complete each activity in one class period.

3. Frequent objections of a petty nature on the part of counsel. Instructions should be given to both the judge and lawyers to confine their objections to essential issues. Otherwise, time will run out.
4. Perjury. Witnesses cannot, of course, intentionally lie. If they do not know an answer, they should be told to say so. Counsel should refrain from obscure questions in cross-examination and should ask only what a student who has done research should know.
5. Historical inaccuracies and misinformation. If these are noted by a lawyer, he should be encouraged to give his own version of the "facts" to the judge, who will then rule on whether the jury should consider the correction in reaching a decision. (Teachers should devote time later to pointing out any inaccuracies or misinformation that might have gone unchallenged by the students.)

Suggested Follow-up Activities

Follow-up activities that the teacher may wish to have students participate in are as follows:

1. *Tape analysis.* Tapes of the trial may be used to launch a discussion of historical inaccuracies that may have emerged during the trials. Through this means students may (a) discuss propaganda devices that participants may have employed to argue their cases; (b) analyze conflicting testimony of witnesses; and (c) perhaps trace conflicts to differences in primary and secondary sources used in student research.
2. *Appointment of committee.* Appoint a small committee of students to create a bulletin board on justice. Class members may be asked to bring in articles and pictures relating to the unit themes.

CHAPTER 5

Sample Test Items

The sample test items in this chapter are presented so that the student can determine how well he understands what he has been studying.

Part One

A. Below are given some events that normally occur in a criminal prosecution. Mark each event as follows:

A if it refers to a grand jury hearing
B if it refers to a jury trial
C if it refers to a court of appeals hearing

Each letter will be used. Some letters may be used more than once.

1. Trial reviewed for fairness
2. Defendant accused of crime
3. Defendant convicted of crime
4. Defendant judged guilty or not guilty
5. Indictment issued

B. Below are given some incidents in criminal trials. Mark each incident as follows:

A if it is fair
B if it is unfair
C if more information is needed to decide

Each of the letters may be used more than once.

1. The jurors had heard about the accused through a television broadcast.
2. The accused was denied bail before trial.
3. The accused volunteered to take the witness stand.
4. The accused was found innocent in a fair trial but was tried again on the same charge and in the same court.
5. The accused confessed to the police.
6. The prosecutor and judge were the same person.

C. Below are given some reports about searches and seizures. In none does the police officer possess a search warrant. Mark each report as follows:

A if it is a reasonable search
B if it is an unreasonable search

Each of the letters may be used more than once.

1. The police officer sees the suspect steal some money and drive off in a car. The officer stops the car, arrests the suspect, and seizes the money.
2. The police officer arrests a suspect seen robbing a store. The officer then searches the suspect for a concealed weapon.
3. The police officer knocks on the door of a private home, identifies himself, and asks for permission to search the home for stolen goods. The owner grants permission.

D. A newspaper states that the police have enough evidence to arrest a person and charge him with assassinating a political leader. Check the statement below that best describes how you feel about the suspect.

1. If the police had enough evidence to arrest him, he is probably guilty.
2. He might be innocent.
3. He should not have done such a terrible thing.
4. I hope that he is not let off easy.

Note: Selection of number 2 indicates that the student understands the unit themes.

E. On August 4 a man was arrested and accused of murdering a whole family for no apparent reason. People in the community were very upset over the case. If you were the judge, which date would you choose to begin his trial? Check the date below that you think best.

1. August 11, a Monday
2. August 12, a Tuesday
3. August 13, a Wednesday
4. December 1, a Thursday

Note: Selection of number 4 indicates that the student understands the unit themes.

Part Two

Directions: For each question circle the letter of the answer that best applies. Only one letter may be circled in each question.

1. A criminal suspect was arrested by the FBI. The first thing the arresting officer did was to inform the suspect of his legal rights. Which of the following is not a "right"?
   a. The right to remain silent
   b. The right to be tried anywhere in the U.S.
   c. The right to know the charges made against the defendant
   d. The right to consult with legal counsel to prepare a defense

2. The suspect was charged with a capital offense, but he felt that no evidence existed against him. He sought his release by a plea of:
   a. Habeas corpus
   b. Double jeopardy
   c. Indictment
   d. Self-incrimination
3. His release was denied. A grand jury then considered the case. Which of the following statements is true of a grand jury?
   a. The suspect may be found guilty by the grand jury.
   b. The suspect may be forced to testify before the grand jury.
   c. The suspect may have his grand jury hearing open to the press.
   d. The suspect may be formally accused of the crime by the grand jury.
4. The suspect was forced to stand trial. The judge issued some instructions to the trial jury. Which of the following statements was *not* included in the instructions?
   a. The burden of proving guilt rests with the prosecutor.
   b. The defendant is innocent until proved guilty.
   c. The defendant must prove his innocence.
   d. The defendant must be proved guilty beyond a reasonable doubt.
5. The judge then pointed out that an item *not* always required in a fair trial is:
   a. Impartial judge and jury
   b. Right to know the charges
   c. Right of the defendant to face his accusers
   d. Release on bail
6. The case went to the jury. Which of the following items is true in criminal cases like this one?
   a. A count of 11 votes for guilty and one vote for innocent means that the defendant is found guilty.
   b. A count of 11 votes for innocent and one vote for guilty means that the defendant is found innocent.
   c. A tie vote means that the defendant goes free.
   d. A count of 11 votes for guilty and one vote for innocent means that the defendant may receive another trial.
7. The defendant was found guilty and was sentenced. Which of the following sentences is most likely to be considered unconstitutional today?
   a. Solitary confinement for life
   b. Hanging

c. Gas chamber
d. Life in prison

8. The defendant's lawyer said that he would appeal. Which of the following items applies to a court of appeals?
   a. It decides whether the defendant is guilty.
   b. It decides whether the defendant has received due process of law.
   c. It must decide cases unanimously.
   d. It never gives reasons for its decisions.
9. Which of the following is most likely to serve as the basis for a defendant's appeal in a capital case?
   a. His sentence was to be death by electrocution.
   b. He voluntarily took the witness stand and then was cross-examined.
   c. The judge excluded his family from attending the trial for no apparent reason.
   d. His jury was impartial.
10. The court of appeals ordered a new trial. Which of the following is most likely to be the reason for the court's decision?
   a. The jurors had read in the newspapers that the defendant was to be tried.
   b. The testimony of an available accuser was used in court although he failed to appear when requested by the defense.
   c. The defendant took the witness stand voluntarily and was then forced to answer questions under cross-examination.
   d. Two newspapermen were present in the courtroom.

Part Three

Imagine that Adolf Hitler has survived World War II and is being tried in a court of law. The due process clause of the U.S. Bill of Rights is applied to the legal proceedings. Check the statement below with which you most strongly agree.

1. Hitler's lawyer is doing his job; that is, he is providing a good defense.
2. Hitler's lawyer is only looking for publicity.
3. Hitler's lawyer is most likely a Nazi.
4. Hitler's lawyer probably believes in his client's innocence.

Note: Selection of number 1 indicates that the student understands the unit themes.

Part Four

Read carefully the fable entitled "The Very Proper Gander."[1] Then write a paragraph explaining how justice is obtained through due process of law. A student who understands the unit themes will include at least four of the following items in his paragraph:

1. Trial or hearing
2. Counsel for the accused
3. Impartial judge and jury
4. Right to cross-examine accusers
5. Right to know the charges
6. Right to appeal
7. Right to be free from cruel and unusual punishments

[1]See James Thurber, *Fables for Our Time.* New York: Harper & Row Pubs., 1952.

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